

PROPOSED AMENDED REGULATORY TEXT

Proposed additions are indicated by underline and deletions are indicated by ~~striketrough~~.

TITLE 15. CRIME PREVENTION AND CORRECTIONS DIVISION 2. BOARD OF PRISON TERMS CHAPTER 3. PAROLE RELEASE ARTICLE 3. PRISONER RIGHTS

Amend 15 CCR § 2253 to read as follows:

§ 2253. Voluntary Waivers, Stipulations of Unsuitability, Postponements, and Continuances

(a) General. The rights and interests of all persons properly appearing before a board life parole consideration hearing are best served when hearings are conducted as scheduled. Occasional circumstances may require the ~~postponement or continuance~~ delay of a scheduled hearing. It is the intention of the board to recognize the need and desirability to occasionally ~~continue or postpone~~ delay a scheduled hearing and to ~~avoid the inconvenience and cost which occurs when hearings are continued or postponed at or near the time at which they are scheduled~~ authorize said delays through a process of voluntary waiver or stipulation to unsuitability or to postpone or continue a scheduled life parole consideration hearing.

(b) Voluntary Waivers. A prisoner may request a ~~postponement~~ to voluntarily waive his or her life parole consideration hearing for any reason. ~~Requests for postponements may be granted for good cause including, but not limited to, the prisoner having pending litigation, insufficient time to prepare, or insufficient time to accumulate necessary documents to present to the panel.~~ Requests for ~~postponements~~ shall be made in writing to the board and shall state the reason for the request.

~~(1) In requesting for postponement should be made at the earliest possible date that the prisoner becomes aware of the circumstances leading to the request, but no later than 10 working days prior to the scheduled hearing. Such requests shall be considered by the department unless the board has notified the department of the board's need to consider the request. A request timely made in conformance with the above schedule shall be presumed to be valid unless good cause to the contrary is shown. The number and circumstances of any past postponements, continuances, or stipulations of unsuitability are relevant factors in considering whether to deny a request for postponement. Staff shall reschedule the postponed case at the earliest date consistent with the request, the availability of the hearing panel, and the need to provide appropriate notice to affected parties~~ a voluntary waiver, the prisoner shall be deemed to have waived his or her right to a life parole consideration hearing pursuant to sections 3041 and 3041.5 of the California Penal Code for the period specified in the waiver.

(A) Prisoners with a commitment offense of murder may waive the life parole consideration hearing for one, two, three, four, or five years from the date of the scheduled hearing.

(B) Prisoners with a commitment offense other than murder may waive the life parole consideration hearing for one or two years from the date of the scheduled hearing.

~~(2) A request submitted less than 10 working days prior to the scheduled hearing shall be considered by the board. Such request shall be presumed to be invalid unless the reasons given were not or reasonably could not have been known prior to 10 working days before the scheduled hearing. In order to avoid cost and inconvenience to properly appearing parties, the board may take the testimony of such parties at the time previously scheduled. The prisoner~~

~~making such an untimely request shall be deemed to have waived his or her right to be present at such statement, unless said prisoner requests and the board grants his or her request to be present. A postponed hearing shall be rescheduled at the convenience of the board, but at a time not to exceed two years unless the prisoner's last appearance before the board resulted in the resetting of a subsequent hearing of less than two years, in which case the hearing shall be rescheduled at a time no greater than that period. The prisoner and the board may agree to any other appropriate time periods.~~ for a voluntary waiver of a life parole consideration hearing should be submitted to the board at the earliest possible date that the prisoner becomes aware of the circumstances leading to the request, but shall be no later than 45 calendar days prior to the date of the scheduled hearing. A request made no later than 45 days prior to the scheduled hearing shall be presumed to be valid.

(3) A request for a voluntary waiver of a life parole consideration hearing submitted less than 45 calendar days prior to the scheduled hearing shall be presumed to be invalid and shall be denied by the board unless good cause is shown and the reason(s) given were not and could not reasonably have been known to the prisoner 45 calendar days prior to the scheduled hearing.

(4) In the event a request for a voluntary waiver is granted during the week of a scheduled life parole consideration hearing, in order to avoid future cost and inconvenience to properly appearing parties, the board shall give the District Attorney and/or the victim or victim's next of kin or designated representative the opportunity to give a statement on the record. If statements are taken, a transcript shall be made and shall be considered by the next hearing panel. The prisoner may waive his or her right to be present for such statements.

(5) Prisoners may waive no more than three consecutive life parole consideration hearings.

~~(e) Continuance of any hearing. A prisoner may request a continuance after the commencement of the hearing for good cause which was unknown, or reasonably could not have been known prior to the commencement of the hearing.~~

~~–(1) In considering a request for a continuance, the board shall weigh the reasons for the request, the need for the continuance, any inconvenience to the board, department, District Attorney's Office, victim or victim's next of kin, and determine what will best serve the interests of justice. If the board grants the request for continuance, it shall attempt to impanel the same members when the hearing is reconvened. However, in requesting a continuance, the prisoner shall be deemed to have stipulated that the board may, in its discretion, reconvene a new panel and commence a new hearing.~~

(c) Stipulations of Unsuitability.

(1) At any time prior to a life parole consideration hearing a prisoner may offer to stipulate to unsuitability for parole. An offer shall be submitted in writing to the board and shall state the reasons that support unsuitability. In considering an offer to stipulate to unsuitability the board shall review any written statements received from the District Attorney and/or a victim or victim's next of kin or designated representative. The board retains discretion to accept or reject the offer to stipulate.

(A) Prisoners with a commitment offense of murder may offer to stipulate to unsuitability for one, two, three, four, or five years from the date of the scheduled hearing.

(B) Prisoners with a commitment offense other than murder may offer to stipulate to unsuitability for one or two years from the date of the scheduled hearing.

(2) If an offer to stipulate to unsuitability is made during the week of the scheduled life parole consideration hearing, the board shall give the District Attorney and/or the victim or victim's next of kin or designated representative the opportunity to give a statement on the record. If statements are taken, a transcript shall be made and shall be considered by the next hearing panel. The prisoner may waive his or her right to be present for such statements.

~~(d) Stipulations of Unsuitability. A prisoner may stipulate to being unsuitable for parole at or before any hearing except the Initial Parole Hearing. An offer to stipulate to unsuitability at the Initial Parole Hearing shall be deemed a request for a postponement of that hearing.~~

~~(1) Offers to stipulate to unsuitability shall be submitted in writing, shall state the reasons that support unsuitability and the suggested period until the next hearing. The prisoner shall sign the offer. Offers to stipulate to unsuitability shall be submitted to and decided by the board as early as possible.~~

~~(2) If an offer to stipule to unsuitability is submitted within 10 days of the time of hearing, reasonable efforts shall be made to determine if it should be accepted in sufficient time to vacate the scheduled hearing and notify affected parties. If the hearing cannot be vacated in sufficient time, the offer to stipulate to unsuitability shall be considered by the board at the time of hearing. The representative of the District Attorney's Office, and any victim or victim's next of kin present for the hearing shall be notified of, and given an opportunity to comment on the offer to stipulate to unsuitability.~~

(d) Postponements.

(1) The Hearing Panel Chair or Board Executive Officer may postpone a life parole consideration hearing, upon its own motion or at the request of a prisoner, due to the unavailability of a hearing panel; the absence or untimeliness of required Department (CDCR)

and/or board notices, documents, reports or required prisoner accommodations; or exigent circumstances such as illness of attending parties, natural disasters or institutional emergencies.

(2) A prisoner may request that the board postpone a life parole consideration hearing to resolve matters relevant to his or her parole consideration, for reasons not set forth in subdivision (1) of this section. The board may grant a postponement only upon the affirmative showing of good cause on the part of the prisoner and only if the prisoner did not and could not have known about the need for the postponement earlier than when he or she made the postponement request. Good cause is a prisoner's excused inability to obtain essential documents or other material evidence or information, despite his or her diligent efforts.

(3) A postponed hearing shall be rescheduled at a date consistent with resolution of the issue causing the postponement, the need to provide notice to affected parties, and panel availability. When the postponed hearing is rescheduled, it shall not displace a previously scheduled hearing.

(4) If a postponement is granted during the week of the scheduled hearing, the Board shall give the District Attorney, the victim or victim's next of kin or designated representative the opportunity to give a statement on the record. Exercising this option will not preclude the speaker from making a statement at subsequent parole consideration hearings. This statement shall be made available for consideration by subsequent hearing panels. If statements are taken, a transcript shall be made and a copy provided to the prisoner.

(e) Continuance. After the commencement of a life parole consideration hearing, the Hearing Panel Chair may continue a hearing only upon a showing of good cause which was unknown, and could not reasonably have been known by the party requesting the continuance, prior to the commencement of the hearing.

(1) In considering a continuance, the Hearing Panel Chair shall weigh the reasons and the need for the continuance and any inconvenience to the board, department, or appearing parties and determine what will best serve the interest of justice.

(2) If a life parole consideration hearing is continued, the board shall attempt to impanel the same panel members when the hearing is reconvened. However, the board may, in its discretion, reconvene a new panel and commence a new hearing.

(3) In the event of a continuance, the District Attorney and/or the victim or victim's next of kin or designated representative may elect to give a statement on the record before the hearing is continued, in lieu of giving a statement when the hearing resumes. This statement shall be made available to subsequent hearing panels.

Note: Authority cited: Sections 12838.4, Government Code; Sections 3052 and 5076.2, Penal Code. Reference: Sections 1170.2, 3041 and 3041.5, Penal Code. *In re Rutherford SC135399A*, February 19, 2008.